

REMARKS

Status of the claims

Claims 1-20 are pending in the application. Claims 7-8 are withdrawn. Claims 1-2, 4-6, 9-11, and 19-20 are rejected. Claim 1 is amended. Claims 2-4 and 12-20 are canceled.

Claim Amendments

Claim 1 was amended to incorporate the limitations of dependent claim 4. No new matter was added in this amendment.

Oath/Declaration

The Examiner states that the oath/declaration is defective because it is not present in the application and therefore, a new oath/declaration in compliance with 37 §C.F.R. 1.67(a) identifying this application by serial number and filing date is required. Applicants submit that copies of the two Combined Declarations and Powers of Attorney for the parent application, U.S.S.N. 09/546,065, now issued as U.S. Patent No. 6,673,214 were properly filed with the instant divisional application. A copy of the date-stamped return postcard for the instant application indicating receipt of the same is enclosed. In addition, a search of the File Wrapper on PAIR includes scanned copies of these declarations. Thus, Applicants submit that new declarations are not needed, however, Applicants include copies of the originally filed documents.

Obviousness-type double patenting

Claims 1 and 4 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 16, 18, and 22 of copending application USSN 10/739,680. Enclosed is a terminal disclaimer in compliance with 37 CFR 1.321(c). Accordingly, Applicants respectfully request that the rejection of claims 1 and 4 under the obviousness-type double patenting be withdrawn.

Claims 1-2 and 4 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 41 and 44-45 of copending application U.S. Serial No. 10/774,320.

The Examiner states that the conflicting claims are not patentably distinct from each other because claim 1 and claim 41 of copending application U.S. Serial No. 10/774,320 are drawn to the same steps wherein the reactants for a biochemical reaction are subjected to electromagnetic radiation which causes an increase in the rate of the biochemical reaction. The Examiner also states that claim 42 of copending application U.S. Serial No. 10/774,320 corresponds to instant claim 2 regarding increasing the energy of the reactants. Claim 44 of copending application U.S. Serial No. 10/774,320 is a species for the claimed genus of biochemical reactions and claim 45 of copending application U.S. Serial No. 10/774,320 corresponds to the enzyme linked immunoassay reaction of instant claim 4.

Applicants have canceled claim 2 and incorporated the limitations of enzyme linked immunoassay reaction of claim 4 into independent claim 1. In copending application U.S. Serial No. 10/774,320, claim 41 depends from claim 40 which itself depends from claim 1. Claim 41 limits the method for increasing the energy of biomolecules recited in claim 40 by further accelerating a biochemical reaction, which may be an enzyme linked immunoassay as encompassed by claims 44-45 of copending application U.S. Serial No. 10/774,320, having the composition of claim 1 as reactants via the increase in energy generated by the application of electromagnetic energy. Claim 1 of copending application U.S. Serial No. 10/774,320 is drawn to a composition comprising biomolecule(s) and an electromagnetic energy absorbing species associated therewith. This is a patentably distinct element not encompassed by the instant claim 1. Applicants amended independent claim 1 is drawn to a method of enhancing an enzyme linked immunoassay reaction. Only ELISA reactants and medium are placed in a reaction vessel and are not associated with, i.e., via a chemical linker, a chemical bond, dimerization, or physical association with a susceptor, an additional electromagnetic absorbing species or substance not present in an ELISA assay.

Accordingly, in view of the arguments presented herein, Applicants respectfully request that the rejection of claims 1 and 4 under the obviousness-type double patenting be withdrawn.

Claim Rejections under 35 U.S.C. §102(b)

Claims 1-2, 5-6, 9-11, and 19-20 are rejected under 35 U.S.C. §102(b) as being anticipated by **Sherman et al.** (Physiol. Chem. And Physics (1973) 5:49-56) in view of **Rawn** (Biochemistry, 1983, Harper and Row: NY, pgs. 231-233). Applicants respectfully traverse this rejection.

In considering independent claim 1, the Examiner states that **Sherman et al.** disclose the effect of electromagnetic radiation (light) on the rate of an enzyme reaction. The Examiner also states that **Sherman et al.** disclose the reaction of lactate dehydrogenase (LDH) with irradiated pyruvate whereby the the energy state S of the irradiated pyruvate is increased to S* and the reaction rate Vmax was significantly increased (pg. 56, Fig. 1). Also, the Examiner states that, although **Sherman et al.** do not expressly state that the change in molecular state of the irradiated substrate is due to vibrations or molecular rotation, such alteration is inherent to the process and the disclosure by **Rawn** is a supporting reference in describing basic enzyme kinetics (MPEP 2131.01).

Applicants have incorporated the limitations of an enzyme-linked immunoassay reaction recited in dependent claim 4, against which **Sherman et al.** was not cited, into independent claim 1. As **Sherman et al.** do not teach the claim element of this incorporated dependent claim, the reference cannot anticipate amended independent claim 1. Therefore neither **Sherman et al.** nor **Rawn** is a proper reference under 35 U.S.C. §102(b). Furthermore, Applicants have canceled claims 2 and 19-20. Original claims 5-6 and 9-11 depend directly

or indirectly from amended independent claim 1. These dependent claims further limit the applied energy (claims 5-6) and the molecular state (claims 9-11). Even should, *arguendo*, claims 5-6 be anticipated by **Sherman et al.** and claims 9-11 be anticipated by **Sherman et al.** in view of **Rawn**, the incorporation of any or all of these dependent claims into their respective amended independent claims still does not remedy the deficiencies in **Sherman et al.** in not anticipating the claim element encompassing an enzyme linked immunoassay reaction.

Accordingly, in view of the claim amendments presented herein, Applicants respectfully request that the rejection of claims 1, 5-6 and 9-11 under 35 U.S.C. §102(b) be withdrawn.

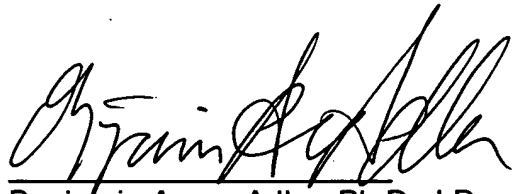
Applicants submit that claims 1, 5-6 and 9-11 are in condition for allowance and respectfully request that claims 1, 5-6 and 9-11 be passed to issuance. Furthermore, as original claims 1 and 4 are linking claims and as amended independent claim 1 incorporates the limitations of original claim 4, Applicants respectfully request that the restriction of species recited in dependent claims 7-8 be withdrawn and that these claims also be allowed and passed to issuance.

This is intended to be a complete response to the Office Action mailed July 12, 2006. If any issues remain outstanding, the Examiner is respectfully requested to telephone the undersigned attorney of record for immediate resolution. Applicants enclose herewith a Terminal Disclaimer. Please charge the \$65 fee under 37 §1.20(d) to the credit card identified on the

enclosed Form PTO-2038. Only in the absence of this Form, please debit any applicable fees from Deposit Account No. 07-1185 upon which the undersigned attorney is allowed to draw.

Respectfully submitted,

Date: Oct 12, 2006

A handwritten signature in black ink, appearing to read "Benjamin Adler", written over a horizontal line.

Benjamin Aaron Adler, Ph.D., J.D.
Registration No. 35,423
Counsel for Applicant

ADLER & ASSOCIATES
8011 Candle Lane
Houston, Texas 77071
Tel: (713) 270-5391
Fax: (713) 270-5361
BADLER1@houston.rr.com